

Patent Docket: 1800/1  
Serial No. 09/671,571

# REMARKS

This amendment responds to the Office Action mailed July 8, 2004.

## **CLAIMS 35-40, 44, 47-64, 67-86, 88-91 AND 95-99 ARE PATENTABLE OVER BOND**

The Examiner rejected claims 35-40, 44, 47-64, 67-86, 88-91 and 95-99 under 35 U.S.C. § 102(e) as being unpatentable over an article entitled "A Star is born nationally, seeking stellar CD sales" by Paul Bond dated November 1, 1999 ["Bond"]. Essentially, the Examiner contends that Bond discloses all of the elements of the claims at issue. The Applicant respectfully disagrees with the Examiner's characterization of these references vis-à-vis the claims at issue.

First, it should be noted that this rejection is based on 35 U.S.C. § 102(e), however, this paragraph requires the reference to be a U.S. Patent Application or a U.S. Patent. Yet Bond is neither a patent nor a patent application, and as such Bond is not a valid reference under 35 U.S.C. § 102(e). Therefore, this rejection cannot stand. Reconsideration and withdrawal of the rejection of these claims is respectfully requested.

As an aside, Bond is also not a valid reference under 35 U.S.C. § 102(b) as the purported publication date is less than one year before the filing date of the present application.

Notwithstanding the above, Bond fails to anticipate the claims at issue. Independent claims 1, 47, 85, 88 and 97 (and the sets of claims that depend therefrom) includes *inter alia* "receiving a signal including a captured sample of media stream from the user." Bond simply fails to disclose this teaching. In contrast, the system described by Bond receives from the user an identification of the radio station playing a song from the user, which is then used to match a song played by the identified radio station as monitored by the StarCD computers. In the StarCD system described by Bond no music sample is captured by the user and sent to the StarCD computer. In the system of the present invention, the music sample is captured

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by the user and the captured sample is then used to recognize the music. As such, the claims at issue are neither anticipated by nor made obvious by Bond. Reconsideration and withdrawal of the rejection of these claims is respectfully requested.

# **CLAIMS 41-43, 45, 46, 65, 66, 87 AND 92-94 ARE PATENTABLE OVER BOND AND ARENT**

The Examiner rejected claims 41-43, 45, 46, 65, 66, 87 and 92-94 under 35 U.S.C. § 103(a) as being unpatentable over Bond in view of U.S. Patent No. 6,018,824 to Arent [hereinafter "Arent"]. Essentially, the Examiner contends that Bond discloses all of the elements of the claims at issue, except for advertising or promotional offers. The Examiner then contends that Arent discloses this missing teaching. The Applicant respectfully disagrees with the Examiner's characterization of these references vis-à-vis the claims at issue.

As discussed above, Bond fails to disclose "receiving a signal including a captured sample of media stream from the user." Moreover, Arent also fails to disclose this teaching. As a result, any combination of Bond and Arent also fails to disclose this teaching. In short, the Applicant respectfully submits that the Examiner has failed to make a *prima facie* case for obviousness because the combination of these references (*i.e.*, Bond and Arent), even assuming *arguendo* they can be combined, does not disclose or suggest all elements of Applicant's rejected claims. As such, the claims at issue are neither anticipated by nor made obvious by these references (*i.e.*, Bond and Arent), either taken alone or in any combination. Reconsideration and withdrawal of the rejection of these claims is respectfully requested.

## **CONCLUSION**

The Applicants respectfully submit this application is in condition for allowance and request issuance of a Notice of Allowance.

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In the event the prosecution of this application can be efficiently advanced by a phone discussion, it is requested that the undersigned attorney be called at (703) 435-9390.

**FEES**

If additional amounts are due following the amendments made to the claims above, or for any other reason, it is respectfully requested that the PTO charge any deficiency or credit any overpayment to the deposit account of Mayer Fortkort & Williams PC, Deposit Account, #50-1047.

Respectfully submitted,

By   
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Date: August 25, 2004

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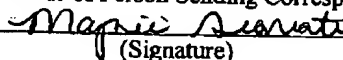
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I hereby certify that this correspondence and any document referenced herein is being sent to the United States Patent and Trademark office via Facsimile to: 703-746-7239 on

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Marjorie Scariati

(Printed Name of Person Sending Correspondence)

  
(Signature)